

JOE D. DENSON

IBLA 78-586

Decided September 28, 1979

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring the Denson Lode No. 1 mining claim null and void ab initio. AA 14983.

Affirmed as modified.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land  
-- Segregation: Filing of Application -- State Selections --  
Withdrawals and Reservations: Generally

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands segregates these lands from all subsequent appropriation, including locations under the mining laws.

2. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land  
-- Withdrawals and Reservations: Effect of

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

APPEARANCES: Joe D. Denson, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Joe D. Denson, has appealed from a July 19, 1978, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring the Denson Lode Claim No. 1 null and void ab initio. The decision indicated the location notice for the claim was posted on March 3, 1973, and was recorded on April 15, 1973, in the Fairbanks Recording District

for lands in sec. 29, T. 14 N., R. 11 E., Copper River meridian, Alaska. BLM then noted that the lands described by appellant were withdrawn from appropriation under the mining laws by the Alaska Native Claim Settlement Act, P.L. 92-203, December 18, 1971, and Public Land Order No. 5184 on March 15, 1972, for classification or reclassification of areas withdrawn by section 11 of the Alaska Native Claims Settlement Act (Act).

In view of the segregative effect of the subject withdrawal, as the BLM indicated, any mining claims located thereafter on the withdrawn land are properly declared null and void ab initio. Gerald Byron Bannon, 40 IBLA 162 (1979); Harry R. Wilson, 35 IBLA 349 (1978).

Appellant, however, now maintains on appeal that he actually located and filed on this claim in July 1969 in both the District Recorder's Office in Fairbanks and the Division of Lands, State of Alaska, in Anchorage, prior to the withdrawal. He asserts that the filing of new notices in March 1973 was only to reflect a change in ownership and not that a new location of mineral had been discovered.

The record shows that on July 27, 1961, the State of Alaska filed State Selection Applications (including F-028165) under section (b) of the Act of July 7, 1958, 72 Stat. 339-43, for all lands within protracted T. 14 N., R. 11 E., Copper River meridian, which included the lands described in the Denson Lode No. 1. The State's selection was tentatively approved by BLM February 26, 1964, for 22,728 acres.

[1, 2] Under 43 CFR 2091.6-4 and 2627.4(b), the filing of the State's selection application for T. 14 N., R. 11 E. on July 27, 1961, segregated these lands from all appropriations, including locations under the mining laws. The State published notice of its selection, as required, within 60 days of service by BLM of its decision directing the State to do so, thus preserving this segregative effect. Appellant admittedly did not locate and record these claims until 1969. The land was not open to mineral location in 1969 when appellant now asserts he located this claim. It is well established that a mining claim located on land segregated from mineral entry is properly declared null and void ab initio. Janelle R. Deeter, 34 IBLA 81 (1978); Sally Lester, 31 IBLA 43 (1977); W. R. Strickler, 27 IBLA 267 (1976). Accordingly, the lands involved have not been available for mining location at any time since July 27, 1961.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed as modified.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

